UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,131	02/27/2004	Matthew Donald Larson	022058.0101PTUS	6765

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EXAMINER
NGUYEN, PHILLIP H

ART UNIT	PAPER NUMBER
2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/789,131	LARSON, MATTHEW DONALD
	Examiner	**Art Unit**	
	Phillip H. Nguyen	2191	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *19 June 2007*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-14* is/are pending in the application.

     4a) Of the above claim(s) *3 and 10* is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,2,4-9 and 11-14* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☐ All   b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)	5) ☐ Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) ☐ Other: _____ .

DETAILED ACTION

1.   This action is in response to the amendment filed on 6/19/2007.

2.   Claims 1, 2, 4-9 and 11-14 have been amended.

3.   Claims 3 and 10 have been canceled.

4.   Claims 1,2,4-9 and 11-14 remain pending and have been considered below.

Response to Arguments

5.   Applicant's arguments with respect to claims 1, 2, 4-9 and 11-14 have been considered but are moot in view of the new ground(s) of rejection.

6.   In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the Abstract) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

7.   Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

8.   Applicant's arguments do not comply with 37 CFR 1.111(c) because they

do not clearly point out the patentable novelty which he or she thinks the claims

present in view of the state of the art disclosed by the references cited or the

objections made. Further, they do not show how the amendments avoid such

references or objections.

Claim Rejections - 35 USC § 101

9.   The amendment filed on 6/19/2007 overcomes the rejection to claims 1-7

of previous office action. Therefore, the rejection is withdrawn.

Claim Rejections - 35 USC § 112

10.   The amendment filed on 6/19/2007 overcomes the rejection to claims 2-9

of previous office action. Therefore, the rejection is withdrawn.

11.   Claims 1 and 8 are unclear to examiner as to whether the identified

software application is equipped with a Reporting Application Interface as recited

in the preamble. For examining purposes, the identified software application may

be equipped or may be not equipped with a Reporting Application Interface.

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to

be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 1, 2, 4-9 and 11-14 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Wilson et al. (United States Patent No.: US 6,714,976 B1).

As per claims 1 and 8:

Wilson discloses:

- software application selection means, responsive to user input, for identifying a software application that is executing on said processor (*It is inherent in order for the controller 216 to identify which software application is running for monitoring. Even if it is not inherent, it could have been obvious to one of ordinary skill in the art to identify which software application for monitoring in order to diagnose the failure ones.*);

- polling means for bypassing said Reporting Application Interface (*Wilson bypasses Reporting Application Interface by using the controller 216*) and periodically polling said presently executing function in said identified software application to retrieve statistics data indicative of operation of said presently executing function in said identified software application (see at least col. 9, lines 14-18 "*A controller 216 which interacts with the clients 212a-212n and the servers 214a-214n to monitor distributed application running on the various client and*

server system. Controller 216 reads and writes to a data repository

220"); and

- data repository means for storing data indicative of an identity of said

    presently executing function and said retrieved statistics data in a memory

    (see at least col. 9, line 18 "...*writes to a data repository 220").*

Wilson does not explicitly disclose:

- function identification means for automatically determining which function

    is presently, executing in said identified software application.

However, it would have been obvious to one having an ordinary skill in the art at

the time the invention was made to recognize that a software application may

have many function interacting with each other to perform a task. One would

have been motivated to identify which function in a software application gets

executing often in order to diagnose the software application.

As per claims 2 and 9:

Wilson further discloses

- means for periodically activating said polling means (see at least col. 9,

    lines 14-15 "*a controller 216 which interacts (activates) with the*

    clients 212a-212n and the servers 214a-214n..."; also see at least col.

    15, lines 41-42 "*data gathering may be performed on a periodic basis*"

    – *clients and server contain distributed applications periodically activate*

    controller 216 to perform data gathering).

As per claims 4 and 11:

Wilson further discloses:

- wherein said determining means comprises: means for retrieving statistics

    data directly from the process call stack of each of said processes (see at

    least col. 5, lines 52-54 "**Because each agent is coupled into the client**

    communication stack, it can monitor the loop back data that passes

    only through the communication stack").

As per claims 5 and 12:

Wilson further discloses:

- wherein said polling means comprises:

    o means for monitoring all the processes embodied in the software

        application (see at least col. 9, lines 14-17 "**a controller 216 which**

        interacts with the clients 212a-212n and the servers 214a-214n

        to monitor distributed applications running (operating) on the

        various client and server system" – *it monitors all processes in*

        the distributed applications).

As per claims 6 and 13:

Wilson further discloses:

- wherein said software application comprises a plurality of processes (*It is*

    inherent in Wilson's approach. One of ordinary skill in the art could

    recognize that a distributed application contains plurality of

processes (functions) in order to fulfill its purposes), said data

repository means comprises:

- o means for storing statistics data from all of the processes presently

  executing within said software application (see at least col. 10, lines

  7-8 "*the data repository 220 in this embodiment is a database*

  created and maintained to store various type of data").

<u>As per claims 7 and 14</u>:

Wilson further discloses:

- - wherein said data repository means comprises:

  - o means for storing said retrieved statistics data individually in the

    data repository to thereby enable the separate analysis of the

    statistics data (see at least col. 10, lines 7-8 "*the data repository*

    220 in this embodiment is a database created and maintained

    to store various type of data" – *each type of data is stored*

    individually).

Conclusion

14.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of

time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

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free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

PN
9/3/2007

WEI ZHEN
SUPERVISORY PATENT EXAMINER